

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL STOKES,

Plaintiff,

-v-

MILKCHOCOLATENYC LLC,

Defendant.

22 Civ. 6786 (PAE) (RWL)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiff Michael Stokes (“Stokes”), a professional photographer, seeks damages from defendant MilkChocolateNYC LLC (“MilkNYC”) for copyright infringement based on MilkNYC’s allegedly unauthorized copying, display, and use of Stokes’s photograph (the “Photograph”) on its social media account. *See* Dkt. 1. MilkNYC was served on September 16, 2022 by delivery of the summons and complaint to its registered agent and again on September 23, 2022 by certified mail, making its answer due by October 14, 2022 at the latest. *See* Dkts. 8, 9. MilkNYC did not file a timely answer.

On January 27, 2023, Stokes obtained a Clerk’s certificate of default as to MilkNYC. Dkt. 15. On February 27, 2023, Stokes moved for default judgment as to MilkNYC, filing a declaration, statement of damages, and proposed default judgment order in support. *See* Dkts. 17–21. That day, Stokes filed a certificate of service of the motion on MilkNYC. *See* Dkt. 22. Also on February 27, 2023, the Court referred the motion to the Honorable Robert W. Lehrburger, United States Magistrate Judge, to whom this Court had previously referred the case for general pretrial supervision, for a Report and Recommendation. *See* Dkts. 7, 23. On

February 28, 2023, Judge Lehrburger ordered that MilkNYC respond to the motion for default judgment by March 17, 2023, Dkt. 24, and Stokes thereafter served that order on MilkNYC, Dkt. 25. MilkNYC did not respond and has not otherwise appeared in this case.

On June 20, 2023, Judge Lehrburger issued a Report, recommending that the Court enter default judgment in favor of Stokes and award Stokes \$30,000 in statutory damages pursuant to 15 U.S.C. § 504(c), \$4,583 in attorneys' fees, \$576 in costs, and no pre-judgment interest. *See* Dkt. 26 (the "Report") at 25–26. Judge Lehrburger also recommended issuing a permanent injunction enjoining MilkNYC from continuing to infringe Stokes's copyright in the Photograph. *Id.* at 18, 26. On June 21, 2023, Stokes served the Report on MilkNYC. Dkt. 27. No parties filed objections. The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts the Report.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). When specific objections are timely made, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).


If a party objecting to a Report and Recommendation makes only conclusory or general objections, or simply reiterates its original arguments, the Court will review the Report strictly for clear error. *See Dickerson v. Conway*, No. 08 Civ. 8024 (PAE), 2013 WL 3199094, at *1 (S.D.N.Y. June 25, 2013); *Kozlowski v. Hulihan*, Nos. 09 Civ. 7583, 10 Civ. 0812 (RJH) (GWG), 2012 WL 383667, at *3 (S.D.N.Y. Feb. 7, 2012). This is so even in the case of a *pro se* plaintiff. *Telfair v. Le Pain Quotidien U.S.*, No. 16 Civ. 5424 (PAE), 2017 WL 1405754, at *1 (S.D.N.Y. Apr. 18, 2017) (citing *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009)).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger's characteristically well-reasoned and thorough Report reveals no facial error in its conclusions. The Report is therefore adopted in its entirety. Because the Report explicitly states that the parties "shall have fourteen (14) days to file written objections to this Report and Recommendation," and that the failure to file timely objections "will result in a waiver of objections and will preclude appellate review," the parties' failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court accepts and adopts Judge Lehrburger's June 20, 2023 Report and Recommendation in its entirety. The Court enters default judgment against MilkNYC and awards Stokes \$30,000 in statutory damages, \$4,583 in attorneys' fees, and \$576 in costs. In addition, the Court permanently enjoins MilkNYC from further infringing conduct as to the Photograph. The Clerk of Court is respectfully directed to close the motion pending at docket number 17 and close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: July 11, 2023
New York, New York